

COMMISSIONER'S DIRECTIVE #26

July 2005

DISCLAIMER: Commissioner's Directives are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Confidentiality of Taxpayer Information

REFERENCES: IC 6-8.1-7-1; IC 6-8.1-7-3

I. INTRODUCTION

The Indiana Department of State Revenue ("Department") is committed to protecting the confidentiality of taxpayer information and privacy rights of Indiana taxpayers. These rights are ensured in the Indiana Code, the Indiana Administrative Code, and the Department's policies and practices. This Commissioner's Directive is intended to provide public notification to taxpayers of the Department's practices relating to the collection, use, and retention of confidential taxpayer information.

II. DISCLOSURE OF CONFIDENTIAL TAXPAYER INFORMATION

Disclosure of confidential taxpayer information by the Department is strictly prohibited except as provided by the laws of this State. The Department's disclosure of confidential taxpayer information is governed by guidelines provided by the Indiana General Assembly. These guidelines have been codified at IC 6-8.1-7-1 and IC 6-8.1-7-3. With limited exceptions, the disclosure of confidential taxpayer information is forbidden. IC 6-8.1-7-1(a) states:

Unless in accordance with a judicial order or as otherwise provided in this chapter, the department, its employees, former employees, counsel, agents, or any other person may not divulge the amount of tax paid by any taxpayer, terms of a settlement agreement executed between a taxpayer and the department, investigation records, investigation reports, or any other information disclosed by the reports filed under the provisions of the law relating to any of the listed taxes, including required information derived from a federal return, except to:

- (1) members and employees of the department;
- (2) the governor;
- (3) the attorney general or any other legal representative of the state in any action in respect to the amount of tax due under the provisions of the law relating to any of the listed taxes; or
- (4) any authorized officers of the United States;

when it is agreed that the information is to be confidential and to be used solely for official purposes.

The General Assembly has also provided Indiana taxpayers with additional protections to prevent the unauthorized disclosure of confidential taxpayer information. Specifically, IC 6-8.1-7-3 states:

A person who violates the provisions of this chapter commits a Class C misdemeanor. In addition, if the person is an officer or employee of the state, he shall be immediately dismissed from his office or employment.

The Department has promulgated rules reinforcing these statutory proscriptions against the unauthorized disclosure of confidential taxpayer information. *See* 45 IAC 15-7-1 and 45 IAC 15-7-2.

III. STREAMLINED SALES TAX PROJECT

In March 2000, a collection of states joined forces to sponsor a national sales tax initiative—the Streamlined Sales Tax Project (“SSTP”). The SSTP represents an effort on the part of its member states to “simplify and modernize sales and use tax collection and administration.” To that end, the Streamlined Sales Tax Implementing States (“SSTIS”) crafted model legislation—i.e., the Streamlined Sales and Use Tax Agreement (“Agreement”). Member states were encouraged to adopt legislation conforming to this model.

In 2001, the General Assembly enacted legislation to guide the Department’s participation in the Streamlined Sales Tax Project. IC 6-2.5-11-7 established specific disclosure and confidentiality requirements:

The department shall not enter into the [Streamlined] agreement unless the agreement requires each state to abide by the following requirements:

* * *

(8) CONSUMER PRIVACY. The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

IC 6-2.5-11-7(8).

The “certified service provider” referenced in IC 6-2.5-11-7(8) is an “agent of a seller ... [employed by the seller to assist in] the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller....” See IC 6-2.5-11-10(a).

The mandate provided by IC 6-2.5-11-7(8) reflects the Department and General Assembly's concerns about the importance of safeguarding confidential information collected from consumers by certified service providers. Section 321 of the Agreement addresses these privacy and confidentiality concerns. Specifically:

- Each member state shall provide public notification to consumers, including their exempt purchasers, of the state's practices relating to the collection, use and retention of personally identifiable information.
- When any personally identifiable information that has been collected and retained is no longer required to ensure the validity of exemptions claimed by reason of a consumer's status or the consumer's intended use of the goods or services purchased, such information shall no longer be retained by the member states.
- When personally identifiable information regarding an individual is retained by or on behalf of a member state, such state shall provide reasonable access by such individual to his or her own information in the state's possession and a right to correct any inaccurately recorded information.
- If anyone other than a member state, or a person authorized by that state's law or the Agreement, seeks to discover personally identifiable information, the state from whom the information is sought should make a reasonable and timely effort to notify the individual of such request.
- This privacy policy is subject to enforcement by member states' attorneys general or other appropriate state government authority.

Streamlined Sales and Use Tax Agreement, “Confidentiality and Privacy Protections under Model 1,” Section 321(e) – (i).

Notwithstanding Indiana's participation in the Streamlined Sales Tax Project, Indiana laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Indiana confidentiality provisions are more restrictive with regard to the disclosure of confidential taxpayer information than those mandated by Section 321 of the Agreement. Additionally, the Department will not recognize certified service providers that fail to adopt the

Agreement's confidentiality and privacy provisions or engage in business practices that violate state confidentiality and disclosure laws.

A handwritten signature in black ink, reading "John Eckart". The signature is written in a cursive style with a large, looping initial "J". A horizontal line is drawn across the page, passing under the signature.

John Eckart
Commissioner